



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (202-719-7049) AND FIRST CLASS MAIL

MAR 22 2012

Michael E. Toner, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 6317
Utah Defenders of Constitutional Integrity;
Timothy Stewart

Dear Mr. Toner:

On March 19, 2012, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of your client, Utah Defenders of Constitutional Integrity, in settlement of a violation of 2 U.S.C. §§ 433, 434, and 441d, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Also on this date, the Commission took no action as to Timothy Stewart, in his individual capacity. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Camilla Jackson Jones
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)

OFFICE)

MUR 6317

Utah Defenders of Constitutional Integrity)

CONCILIATION AGREEMENT

This matter was initiated by an externally-generated complaint. The Federal Election Commission ("Commission") found reason to believe that Utah Defenders of Constitutional Integrity ("UDCI" or "Respondent") violated 2 U.S.C. §§ 433, 434, and 441d of the Federal Election Campaign Act of 1971, as amended ("the Act").

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent voluntarily enters into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

Background

1. UDCI was an unincorporated, grassroots collection of individuals who collaborated with each other for the sole purpose of sending a single mail piece to the delegates who would be selecting the Republican Senate candidate at the May 7-9, 2010, Utah GOP Nominating Convention. UDCI was not a formal organization, had no treasurer, had no

1 governing documents, and had no formal organizational structure. The individuals involved did
2 not open a bank account on behalf of UDCI, or take any other action to establish or operate an
3 ongoing entity.

4 2. UDCI did not register as a political committee with the Commission.

5 3. In April 2010, after discussions with George Marshall and Randy
6 Simmons, Timothy Stewart consulted with Michael Copperthite of Capital Campaigns, Inc. and
7 a third party vendor, Precision Strategies LLC, to design, edit, and distribute the mail piece.

8 4. On or about May 4, 2010, a few days before the May 7-9, 2010,
9 Republican nominating convention, UDCI sent the mail piece, via the United States Postal
10 Service, to approximately 2,000 of the 3,500 convention delegates.

11 5. The front of the mail piece poses the question, "Which candidate really
12 has Utah values?" Over that question, on the right half of the mail piece, is a picture of the
13 United States Capitol with an insert photo of then-Senator Robert Bennett; opposite this image,
14 on the left half of the mail piece, is a picture of the Mormon Temple in Salt Lake City with a
15 photo of one of Senator Bennett's opponents, Mike Lee. The back of the mail piece reads,
16 "Utahans Value the Constitution Above All Else. But we know it hangs by a thread. Does
17 Senator Bennett care? Or does he care about staying in power? . . . You know the answer and
18 you have the power to change things." Below this section is a highlighted box with the
19 statement, "State Delegates, on May 8th, Release Bennett with a vote of thanks and extend the
20 call to someone new." The mail piece includes the disclaimer, "Paid for by Utah Defenders of
21 Constitutional Integrity. Not authorized by any candidate or candidate's committee." The
22 disclaimer does not include any address, telephone number, or World Wide Web address.

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1 6. Precision Strategies, LLC billed Respondent \$4,734.25 for the creation,
2 production, and dissemination of the UDCI mail piece. The parties did not sign any written
3 agreements regarding who would be responsible for the costs associated with the creation and
4 distribution of the UDCI mail piece. Timothy Stewart verbally agreed to pay the initial costs for
5 the UDCI mail piece, and used \$3,500 of his personal funds to pay for the cost of the mail piece.
6 George Marshall contributed \$75 to reimburse Stewart for the cost of the UDCI mail piece, and
7 agreed to assist Stewart with raising additional funds to defray the cost of the mail piece. The
8 parties did not raise any additional funds for the UDCI mail piece.

9 7. Michael Copperthite spent \$199 on or about April 30, 2010, for mailing
10 list development, which entailed data cleaning and formatting of the state convention delegate
11 list. An unspecified individual spent \$50 for a prepaid cellular telephone to answer any
12 telephone calls that might be received in response to the mail piece.

13 8. Respondent did not file any reports with the Commission disclosing the
14 expenditures related to the mail piece.

15 Applicable Law

16 9. The Federal Election Campaign Act of 1971, as amended, ("the Act"),
17 defines a "political committee" as any committee, association, or other group of persons that
18 receives "contributions" or makes "expenditures" for the purpose of influencing a Federal
19 election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The
20 term "contribution" is defined to include "any gift, subscription, loan, advance, or deposit of
21 money or anything of value made by any person for the purpose of influencing any election for
22 Federal office." 2 U.S.C. § 431(8)(A)(i). The term "expenditure" is defined to include "any

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1 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,
2 made by any person for the purpose of influencing any election for Federal Office.” 2 U.S.C.
3 § 431(9)(A)(i).

4 10. The Act’s definition of expenditure, when applied to communications
5 made independently of a candidate or a candidate’s committee, reaches only funds used for
6 communications “expressly advocat[ing] the election or defeat of a clearly identified candidate.”
7 2 U.S.C. § 431(17). The Commission has defined express advocacy in the regulations set forth
8 at 11 C.F.R. § 100.22. Under Section 100.22(a),

9 Expressly advocating means any communication that – (a) uses phrases such as
10 “vote for the President,” “re-elect your Congressman,” “support the Democratic
11 nominee,” “cast your ballot for the Republican challenger for U.S. Senate in
12 Georgia,” “Smith for Congress,” “Bill McKay in ’94,” “vote Pro-Life” or “vote
13 Pro-Choice” accompanied by a listing of clearly identified candidates described as
14 Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a
15 picture of one of more candidate(s), “reject the incumbent,” or communications of
16 campaign slogan(s) or individual word(s), which in context can have no other
17 reasonable meaning than to urge the election or defeat of one or more clearly
18 identified candidate(s), such as posters, bumper stickers, advertisements, etc.
19 which say “Nixon’s the One,” “Carter ’76,” “Reagan/Bush” or “Mondale!”
20

21 11 C.F.R. § 100.22(a).

22 11. Groups that trigger political committee status are required to register with
23 the Commission and publicly report all of their receipts and disbursements. See 2 U.S.C. §§ 433
24 and 434. An organization will not be considered a “political committee” unless its “major
25 purpose is Federal campaign activity (i.e., the nomination or election of a Federal candidate).”
26 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595,
27 5597 (Feb. 7, 2007). See *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts*
28 *Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

12. The Act requires political committees to register with the Commission and file a Statement of Organization within ten days of becoming a political committee, including the name, address, and type of committee; the name, address, relationship, and type of any connected organization or affiliated committee; the name, address, and position of the custodian of books and accounts of the committee; the name and address of the treasurer of the committee; and a listing of all banks, safety deposit boxes, or other depositories used by the committee. See 2 U.S.C. § 433.

13. Each treasurer of a political committee shall file periodic reports of the committee's receipts and disbursements with the Commission. See 2 U.S.C. § 434(a)(1). In the case of committees that are not authorized committees of a candidate for federal office, these reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting period, see 2 U.S.C. § 434(b)(1); the total amounts of the committee's receipts for the reporting period and for the calendar year to date, see 2 U.S.C. § 434(b)(2); and the total amounts of the committee's disbursements for the reporting period and the calendar year to date. See 2 U.S.C. § 434(b)(4).

14. Additionally, a political committee that makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election, must file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1).

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1 15. The Act also requires that all general public advertising, public
2 communications, or mass mailings containing express advocacy made by a political committee
3 include disclaimers. 2 U.S.C. § 441d; 11 C.F.R. §§ 110.11(a)(2), 100.26, and 100.27.
4 Communications that are not authorized by a federal candidate are required to clearly state the
5 name and permanent street address, telephone number, or World Wide Web address of the
6 person who paid for the communications, and to state that the communications were not
7 authorized by any candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3).

8 Facts

9 16. Respondent made more than \$1,000 in expenditures to produce and
10 disseminate a mail piece that expressly advocated the defeat of a clearly identified federal
11 candidate for the Utah Republican Senate nomination.

12 17. Respondent was formed for the sole purpose of influencing the nomination
13 of a candidate for federal office at the 2010 Utah GOP Nominating Convention.

14 18. Respondent failed to register and file disclosure reports with the
15 Commission as a political committee.

16 19. Respondent failed to file an independent expenditure report with the
17 Commission disclosing the costs of, and the sources of funds for, the mail piece expressly
18 advocating the election or defeat of a clearly identified federal candidate that was distributed less
19 than 20 days prior to the May 7-9, 2010, Utah GOP Nominating Convention.

20 20. Respondent's mail piece failed to include a telephone number, permanent
21 street address, or World Wide Web address, as required by the Act.

V. 1. Utah Defenders of Constitutional Integrity violated 2 U.S.C. §§ 433 and 434(a) by failing to register and report as a political committee.

2. Utah Defenders of Constitutional Integrity violated 2 U.S.C. §§ 434(g) by failing to file an independent expenditure disclosure report.

3. Utah Defenders of Constitutional Integrity violated 2 U.S.C. § 441d by failing to include a complete disclaimer in its mail piece.

VI. 1. Respondent will pay a civil penalty of One Thousand Four Hundred Dollars (\$1,400), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondent will cease and desist from violating 2 U.S.C. §§ 433, 434(a), 434(g), and 441d.

3. Respondent will register with the Commission as a political committee and file disclosure reports for 2010 and each subsequent year; and will file an independent expenditure report with the Commission for its May 2010 mailer. Respondent will confer with the Commission's Reports Analysis Division ("RAD") regarding ways for Respondent to satisfy the registration and reporting requirements of this paragraph.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.


VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than sixty (60) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Anthony Herman
General Counsel

BY:


~~Kathleen M. Guith~~ DANIEL A. PETALAS
Acting Associate General Counsel
for Enforcement

3/21/12
Date

FOR THE RESPONDENT:

BY:


Timothy Stewart
Utah Defenders of Constitutional Integrity

2/13/12
Date